

ESTTA Tracking number: **ESTTA453410**

Filing date: **01/27/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203057
Party	Defendant Commemorative Derby Promotions, Inc.
Correspondence Address	THERESA F CAMORIANO CAMORIANO AND ASSOCIATES 8225 SHELBYVILLE RD LOUISVILLE, KY 40222-5421  resa@inventky.com
Submission	Answer
Filer's Name	Donald L. Cox
Filer's e-mail	doncox@lynchcox.com
Signature	/s/Donald L. Cox
Date	01/27/2012
Attachments	Answer to Notice of Opposition 012712.pdf ( 8 pages )(97169 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In re* matter of U.S. Application No. 85/219,903  
For the mark **LOUISVILLE JOCKEY CLUB**  
Published in the *Official Gazette* on August 30, 2011

Churchill Downs Incorporated	)	
	)	
Opposer,	)	
	)	
V.	)	
	)	Opposition No. 91203057
	)	
Commemorative Derby Promotions, Inc.	)	
	)	
Applicant	)	
	)	

**ANSWER TO NOTICE OF OPPOSITION**

The Applicant, Commemorative Derby Promotions, Inc. (“**CDP**”), by counsel, and for its Answer to the Notice of Opposition filed on behalf of the Opposer, Churchill Downs Incorporated (“**CDI**”), states as follows:

1. Applicant is without sufficient knowledge, information or belief in which to admit or deny the allegations contained within Paragraph 1 of the Notice of Opposition and, therefore, said allegations are denied.

2. Applicant denies so much of the allegations contained within Paragraph 2 of the Notice of Opposition which assert that Churchill Downs is the successor in interest of the prior owners and operators of the horseracing facility known as Churchill Downs located on Central Avenue in Louisville, Kentucky. Applicant is without sufficient knowledge, information or belief in which to admit or deny the remaining allegations

contained within Paragraph 2 of the Notice of Opposition and, therefore, said allegations are denied.

3. Applicant is without sufficient knowledge, information or belief in which to admit or deny the allegations contained within Paragraphs 3 and 4 of the Notice of Opposition and, therefore, said allegations are denied.

4. Applicant denies so much of the allegations contained within Paragraph 5 of the Notice of Opposition which assert that the Kentucky Jockey Club became the successor in interest of the owner and operator of the Churchill Downs horseracing facility; that the investment group headed by Matt J. Winn became the successor in interest of an entity known as the New Louisville Jockey Club or that the New Louisville Jockey Club acquired the horseracing facility then known as the Louisville Jockey Club, also known as Churchill Downs. The Applicant is without sufficient knowledge, information or belief in which to admit or deny the remaining allegations contained within Paragraph 5 of the Notice of Opposition and, therefore, said allegations are denied.

5. Applicant denies so much of the allegations contained within Paragraph 6 of the Notice of Opposition which assert that Colonel M. Lewis Clark created a horseracing facility which he named the Louisville Jockey Club. The Applicant is without sufficient knowledge, information or belief in which to admit or deny the remaining allegations contained within Paragraph 6 of the Notice of Opposition and, therefore, said allegations are denied. The Applicant does not deny matters of public record.

6. Applicant denies the allegations contained within Paragraph 7 of the Notice of Opposition.

7. Applicant denies the allegations contained within Paragraph 8 of the Notice of Opposition to the extent they seek to speculate on the knowledge, thoughts or opinions of persons in the horseracing industry or constitute hyperbole.

8. Applicant denies so much of the allegations contained within Paragraph 9 of the Notice of Opposition which assert that Churchill Downs is the successor in interest to the Louisville Jockey Club horseracing facility. Applicant is without sufficient knowledge, information or belief in which to admit or deny the remaining allegations contained within Paragraph 9 of the Notice of Opposition and, therefore, said allegations are denied.

9. Applicant admits so much of the allegations contained within Paragraph 10 of the Notice of Opposition which assert that the Kentucky Derby is a famous thoroughbred horse race in the United States if not the world. Applicant denies the remaining allegations contained within Paragraph 10 of the Notice of Opposition as hyperbole and speculation.

10. Applicant denies so much of the allegations contained within Paragraph 11 of the Notice of Opposition which assert that Churchill Downs uses “Louisville Jockey Club” to either identify or distinguish Churchill Downs. Applicant is without sufficient knowledge, information or belief in which to admit or deny the remaining allegations contained within Paragraph 11 of the Notice of Opposition, and, therefore said allegations are denied.

11. Applicant denies the allegations contained within Paragraph 12 of the Notice of Opposition.

12. Applicant is without sufficient knowledge, information or belief in which to admit or deny the allegations contained within Paragraph 13 of the Notice of Opposition, and, therefore, said allegations are denied.

13. Applicant denies the allegations contained within Paragraph 14 of the Notice of Opposition to the extent they seek to speculate on the knowledge, thoughts or opinions of persons in the horseracing industry or constitute hyperbole.

14. Applicant is without sufficient knowledge, information or belief in which to admit or deny the allegations contained within Paragraph 15 of the Notice of Opposition, and, therefore, said allegations are denied.

15. Applicant denies the allegations contained within Paragraph 16 of the Notice of Opposition to the extent that they seek to interpret or construe the application referenced therein and affirmatively states that the application referenced in Paragraph 16 of the Notice of Opposition speaks for itself.

16. Applicant is without sufficient knowledge, information or belief in which to admit or deny the allegations contained within Paragraph 17 of the Notice of Opposition, and, therefore, said allegations are denied. Applicant does not deny matters of public record.

17. Applicant admits the allegations contained within Paragraph 18 of the Notice of Opposition.

18. Applicant admits so much of the allegations contained within Paragraph 19 of the Notice of Opposition which assert that CDP executed a document titled Churchill Downs Incorporated Standard Retail Product License Agreement and that a copy of that document is attached to the Notice of Opposition and labeled Plaintiff's Exhibit 1. Applicant denies the remaining allegations contained within Paragraph 19 of the Notice of Opposition to the extent they seek to interpret or construe the License Agreement and

affirmatively states that the License Agreement speaks for itself.

19. Applicant denies the allegations contained within Paragraphs 20, 21 and 22 of the Notice of Opposition to the extent they seek to construe or interpret the terms and conditions of the License Agreement referenced therein and affirmatively states that the License Agreement speaks for itself.

20. Applicant denies the allegations contained within Paragraph 23 of the Notice of Opposition.

21. Applicant denies the allegations contained within Paragraph 24 of the Notice of Opposition to the extent they seek to construe or interpret the terms and conditions of the License Agreement referenced therein and affirmatively states that the License Agreement speaks for itself.

22. Applicant admits so much of the allegations contained within Paragraph 25 of the Notice of Opposition which assert that CDP has used and intends to continue to use LOUISVILLE JOCKEY CLUB in connection with its merchandise. Applicant denies all remaining allegations contained within Paragraph 25 of the Notice of Opposition.

23. Applicant admits so much of the allegations contained within Paragraph 26 of the Notice of Opposition that assert that on January 18, 2011, Applicant filed the application here opposed with the United States Patent and Trademark Office, seeking registration of the "LOUISVILLE JOCKEY CLUB" mark for "[p]romoting the sport of horse racing." Applicant denies the remaining allegations contained within Paragraph 26 of the Notice of Opposition to the extent they seek to construe or interpret the terms and conditions of the License Agreement referenced therein and affirmatively states that the

License Agreement speaks for itself.

24. Applicant denies the allegations contained within Paragraph 27 of the Notice of Opposition.

25. Applicant denies the allegations contained within Paragraph 28 of the Notice of Opposition.

26. Applicant denies all allegations contained within the Notice of Opposition not specifically admitted to herein.

#### **First Affirmative Defense**

27. The allegations contained within the Notice of Opposition fail to state a claim upon which relief may be granted.

#### **Second Affirmative Defense**

28. The allegations contained within the Notice of Opposition are barred in whole or in part due to the unfair competition of CDI.

#### **Third Affirmative Defense**

29. The allegations contained within the Notice of Opposition are barred in whole or in part due to the unclean hands of CDI.

#### **Fourth Affirmative Defense**

30. The allegations contained within the Notice of Opposition are barred in whole or in part due to the doctrine of estoppel.

#### **Fifth Affirmative Defense**

31. The allegations contained within the Notice of Opposition are barred in whole

or in part as a result of the doctrine of waiver.

WHEREFORE, the Applicant demands as follows:

1. That the Notice of Opposition be dismissed and that registration of Applicant's application be granted.

2. Any and all other relief to which the Board deems the Applicant to be entitled.

This answer to the Notice of Opposition is being filed through the ESTTA System.

Respectfully submitted,

/s/ Donald L. Cox

DONALD L. COX

WILLIAM H. MOONEY

LYNCH, COX, GILMAN & GOODMAN, PSC

500 W. Jefferson Street, Suite 2100

Louisville, KY 40202

(502) 589-4215

[doncox@lynchcox.com](mailto:doncox@lynchcox.com)

[wmooney@lynchcox.com](mailto:wmooney@lynchcox.com)

*Counsel for Applicant*

*Commemorative Derby Promotions, Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of January, 2012, I electronically filed the foregoing document, Answer to Notice of Opposition, by using the Electronic System for Trademark Trials and Appeals, which will send notice of electronic filing to the counsel on record.

Jack A. Wheat  
Lindsay Yeakel Capps  
STITES & HARBISON, PLLC  
400 West Market Street, Suite 1800  
Louisville, KY 40202  
Attorney for Opposer, Churchill Downs Incorporated

This 27<sup>th</sup> day of January, 2012.

/s/ Donald L. Cox  
DONALD L. COX  
LYNCH, COX, GILMAN & GOODMAN, PSC  
500 W. Jefferson Street, Suite 2100  
Louisville, KY 40202  
(502) 589-4215  
[doncox@lynchcox.com](mailto:doncox@lynchcox.com)

*Counsel for Applicant  
Commemorative Derby Promotions*